

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LaMOUNT CORTEZ DORITY,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-15-30-D
)	
JANET DOWLING,¹)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, has filed an application/motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Timothy D. DeGiusti, this matter has been referred to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5.00. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion, **ECF No. 3**, be **DENIED** and that he be ordered to prepay the full \$5.00 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). *Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate

¹ Respondent was housed in the James Crabtree Correctional Center when he filed his Petition, therefore, the proper Respondent in this matter is Janet Dowling, Warden. 28 U.S.C. § 2242 (proper respondent to a habeas petition is "the person who has custody over [the petitioner]"); *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) ("Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement."). Therefore, Janet Dowling is substituted as the proper Respondent.

judge should issue a report and recommendation when denying motion to proceed *in forma pauperis*.).

It is further recommended that this action be dismissed without prejudice to re-filing unless Petitioner pays the \$5.00 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation. Plaintiff is advised of his right to file specific written objections to this Report and Recommendation. 28 U.S.C. § 636; Fed. R. Civ. P. 72. Any such objections must be filed with Clerk of the District Court by **January 30, 2015**. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This report and recommendation terminates the referral to the undersigned Magistrate Judge unless and until the matter is re-referred.

ENTERED on January 13, 2015.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE